

1 [INSERT NAME AND ADDRESS]

2 Telephone:

3 Facsimile:

4 Email:

Attorneys for Trustee

(Or Debtor in Possession)

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7
8 UNITED STATES BANKRUPTCY COURT

9 _____ DISTRICT OF CALIFORNIA

10 _____ DIVISION

11 In re:

12 JOHN DOE,

13 Debtor.

CASE NO.
Chapter 7 (or 11)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN
SUPPORT OF ORDER AUTHORIZING
TRUSTEE [DEBTOR IN POSSESSION]
TO SELL REAL PROPERTY FREE
AND CLEAR OF LIENS

Hearing

Date:

Time:

Place:

19
20 On the date and at the time set forth above, a hearing was held before the undersigned
21 United States Bankruptcy Judge in the above-captioned chapter __ case of John Doe (the
22 “Debtor”) upon the “Motion to Sell Real Property Free and Clear of Liens” (the “Motion”) filed
23 by _____, [the trustee (the “Trustee”)] [or] [John Doe, in his capacity as debtor in
24 possession (hereinafter referred to in such capacity as the “Trustee”)], there appearing
25 _____, counsel to the Trustee, and other parties in interest as set forth in
26 the recorded transcript of the hearing on the Motion.

27 Having given due consideration to the Motion, the declarations and other evidence
28 submitted in support of the Motion, [any opposition and/or response filed], the record and

1 proceedings in the above-captioned case, [stipulations recited in open court], the arguments of
2 counsel [and other interested parties] at the hearing, and for other good cause shown, the Court
3 hereby finds, as a matter of fact, and concludes, as a matter of law as provided under Federal
4 Rules of Bankruptcy Procedure¹ 7052 and 9014, as follows:

5 1. On _____[insert date of petition], the Debtor filed a petition under chapter ____
6 of Title 11 of the United States Bankruptcy Code. [The Trustee was duly appointed on
7 _____[or] The Debtor is a debtor in possession herein.]

8 2. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334 to approve the
9 sale of the property which is the subject of the Motion (the “Property”) free and clear of those
10 liens, encumbrances, claims and interests identified herein, and to authorize the Trustee on behalf
11 of the estate in the above-captioned case (the “Estate”) to enter into and perform in accordance
12 with the [insert title of sale agreement] dated [insert date], including modification thereto, if any,
13 set forth in the record of the hearing on the Motion (the “Agreement”), [a copy of which is
14 attached hereto as Exhibit “A”]. The motion is a core proceeding pursuant to 28 U.S.C.
15 §§157(b)(2)(A), (N), and (O). The statutory predicates for the relief requested in the Motion are
16 11 U.S.C. § 363, and Bankruptcy Rules 2002, 6004 and 9014.

17 3. All objections, if any, to the Motion and to the approval of the Agreement,
18 including the transactions contemplated thereby, have been withdrawn, resolved, or overruled.

19 4. The Property is situated in _____, County of _____, State
20 of _____, described more fully as follows: [insert here or attached as Exhibit “B”].

21 5. Record title to the Property is vested in _____ (the “Record Owner”).

22 6. As set forth in the declarations of service filed with this Court in connection with
23 the Motion, notice of the hearing on the approval of the Motion (the “Notice”) was duly served on
24 (a) the Debtor and [his] counsel, (b) all creditors and interested parties [or] [those creditors and
25 interested parties, including parties requesting special notice, as authorized and directed in prior
26 orders of this Court limiting notice pursuant to Bankruptcy Rule 2002(i)], (c) each entity known
27 _____

28 ¹ All subsequent references to the Federal Rules of Bankruptcy Procedure herein shall be to the
“Bankruptcy Rules.”

1 to the Trustee to assert a lien, encumbrance or other interest in, or claim to, the Property that is
2 affected by this Order, and (d) the Office of the United States Trustee, all in accordance with
3 applicable Bankruptcy Rules 2002(a)(2), 2002(c)(1), 2002(i), 2002(k), 6004(a) and 6004(c).
4 Each entity known to the Trustee to assert a lien, encumbrance, claim or other interest in or to the
5 Property that is affected by this Order was also served with a complete copy of the Motion, and
6 all supporting declarations and pleadings filed by the Trustee in connection with the Motion.

7 7. The Notice (1) complied in all respects with the requirements of the Bankruptcy
8 Code and the Bankruptcy Rules; (2) fully and adequately described the relief requested in the
9 Motion and set forth the means by which the Motion, and all supporting declarations and
10 pleadings filed by the Trustee in connection with the Motion, could be obtained promptly by a
11 party in interest; (3) provided fair and reasonable notice under the circumstances of this case with
12 respect to deadlines and procedures for objecting to the relief requested in the Motion; and (4) set
13 forth the time, date and place for the hearing on the Motion.

14 8. [The proposed sale does not entail a sale of all or substantially all of the Debtor's
15 assets] [or] [The proposed sale involves all or substantially all of the Debtor's assets; accordingly,
16 pursuant to Bankruptcy Rule 2002(d)(3), notice of the proposed sale has been provided to the
17 Debtor's equity security holders].

18 9. The Property is subject to the liens, encumbrances and other interests of record as
19 set forth in the preliminary report/title commitment (the "Title Report") issued by

20 _____ as of _____ attached to the Declaration of _____

21 filed in support of the Motion, including, without limitation, the following:

22	Nature of Interest	Name of Holder	Amount Scheduled by Debtor	Amount Known to Declarant
23	1 st Deed of Trust:			
24	2 nd Deed of Trust:			
25	3 rd Deed of Trust:			
26	Judgment Liens:			
27	Taxes:			
28				

1 Other:

2
3 [Note: Use sample Paragraphs 10 through 13, as appropriate, to describe the basis
4 for sale free and clear as to each lien or interest holder identified in Paragraph 8 above, repeating
5 each as often as required and deleting the unnecessary paragraphs].

6 10. Within the meaning of 11 U.S.C. §363(f)(1), [insert applicable nonbankruptcy
7 law] permits the sale of the Property free and clear of any and all interests of [lien or interest
8 holder] in the Property, including, without limitation, those liens, encumbrances or interests of
9 such party listed in Paragraph 9 above.

10 11. Within the meaning of 11 U.S.C. §363(f)(2), [lien or interest holder] has consented
11 to the sale of the Property free and clear of any and all its liens, encumbrances or interests in the
12 Property, including, without limitation, those liens, encumbrances or interests of such party listed
13 in Paragraph 9 above.

14 12. Within the meaning of 11 U.S.C. §363(f)(3), the purchase price of the Property is
15 greater than the aggregate value of all liens on the Property.

16 13. Within the meaning of 11 U.S.C. §363(f)(4), the interests of [lien or interest
17 holder] in the Property, including, without limitation, those liens, encumbrances or other interests
18 of such party listed in Paragraph 9 above, are subject to bona fide dispute based on the following:
19 [state nature of bona fide dispute].

20 14. Within the meaning of 11 U.S.C. §363(f)(5), [lien or interest holder] can be
21 compelled, in a legal or equitable proceeding, to accept a money satisfaction of its liens,
22 encumbrances or interests in the Property, including, without limitation, those liens,
23 encumbrances and interests of such party listed in Paragraph 9 above.

24 15. [Name of deed of trust holder], the _____ deed of trust holder on the Property
25 has an undisputed allowed claim of \$ _____ on the Property and is entitled to immediate
26 payment out of the proceeds of the escrow. [Add similar provisions for all undisputed liens that
27 will be paid from escrow].
28

1 16. The Trustee has engaged in fair and reasonable marketing, advertising and other
2 sale efforts and procedures in connection with the sale of the Property, which efforts and
3 procedures have enabled the Estate to obtain a fair and reasonable price for the Property under the
4 circumstances of this case. In connection with the proposed sale, the Trustee has complied with
5 all sale procedures established or required by this Court.

6 17. The highest and best offer to purchase the Property was the one received from
7 _____ (the "Purchaser") to purchase the Property for a purchase price of
8 \$_____ on the terms and conditions set forth in the Agreement, including the following
9 modifications thereto as set forth on the record at the time of the hearing on the Motion:

10 A. [insert changes to the terms of the Agreement agreed to on the record]

11 B.

12 18. The Purchaser is unrelated to the Debtor and the Trustee. [Otherwise, set forth
13 connections, if any, among the parties in interest and court approval thereof]. The Agreement
14 was negotiated, proposed, and entered into by the parties without collusion, in good faith, and
15 from arm's-length bargaining positions. Neither the Trustee nor the Purchaser has engaged in any
16 conduct that would cause or permit the Agreement, or the transactions contemplated thereby, to
17 be invalidated or avoided under 11 U.S.C. §363(n). Based on the evidence submitted to the
18 Court, the Purchaser qualifies as a buyer in "good faith" within the meaning of 11 U.S.C.
19 §363(m).

20 19. The terms and conditions of the sale transaction as provided for in the Agreement
21 are fair and reasonable; entry into the Agreement on behalf of the Estate is a sound exercise of the
22 Trustee's reasonable business judgment; and, the sale transaction contemplated by the Agreement
23 is in the best interests of the creditors, interest holders and the Estate.

24 20. [If the parties intend to include a provision to waive the ten-day stay period
25 provided by Rule 6006(g), insert a finding, based upon evidence submitted to the Court, as to why
26 the sale transaction must be closed prior to the expiration of the ten-day stay period. Title
27 industry urges caution that (1) compelling reasons for such a waiver be clearly stated in this
28 paragraph (intended to be finding of fact to support court's action should the waiver be called into

1 question in a subsequent appeal), and (2) that the title insurer be consulted prior to proceeding
2 with this approach to determine whether, to what extent and under what conditions, the title
3 insurer will rely on an order waiving the stay period].

4 Dated:

UNITED STATES BANKRUPTCY COURT JUDGE